IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/04/2004

CORAM

THE HONOURABLE MR. JUSTICE A.S. VENKATACHALAMOORTHY
AND
THE HONOURABLE MR. JUSTICE P.K. MISRA

T.C.No.286 of 2001
and T.C. Nos. 287 to 293 of 2001

M/s. Ravi & Co.,
No.77, Sathy Road,
Erode 638 003. .. Appellant in T.C.Nos.286,
287,288,291 & 292 of 2001

M/s. Rani & Co.,
No.77, Sathy Road,
Erode 638 003. .. Appellant in T.C.Nos.289,290 & 293 of 2001

-Vs-

The Asst. Commissioner of
Income-tax,
Circle I(1), Erode. .. Respondent in all cases

Tax Case Appeals arising out of ITA Nos.1576 to 1583/Mds/1994 dated 12.4.2000 at the instance of the Appellant.

For Appellant : Mr.N. Quadir Hoseyn

For Respondent : Mr.K. Subramanian
Senior Standing Counsel(Tax)

:J U D G M E N T

P.K. MISRA, J

Appellants are partnership concerns deriving income as dealer in timber and tiles. The dispute relates to assessment years 1986-87 to 19 91-92. The appellants had initially filed return for the different assessment years showing certain income. Subsequently, in course of the assessment proceedings for the assessment years 1991-92 along with notice under Section 143(2) of the Income Tax Act (hereinafter referred to as the Act), the Assessing Officer had issued questionnaire calling for certain details. Reply was filed on 2-3-1992. Thereafter the appellants filed revised returns for

the assessment years 1986-87 to 1991-92 and paid tax accordingly. The Assistant Commissioner of Income Tax while accepting the income declared in the revised returns, initiated penalty proceedings under Section 271(1)(c) of the Act. The appellants filed reply dated 27.4.1993 submitting that the additional income had been disclosed voluntarily to get benefit under Section 273A of the Act as per the budget speech in 1991-92. However, the Assistant Commissioner of Income Tax passed orders imposing penalty holding that the revised returns had not been filed voluntarily and there had been concealment of credits which were sought to be disclosed in the revised returns. On the appeals filed by the appellants, the Commissioner of Income Tax (Appeals) by a consolidated order dated 7.4.1994 allowed the appeals and cancelled the penalty levied on a finding that the revised returns have been filed voluntarily, by following the decision of the Supreme Court in 168 ITR 705 (SIR SHADILAL SUGAR AND GENERAL MILLS LTD. v. COMMISSIONER OF INCOME-TAX). The aforesaid order was challenged by the Department by filing appeal before the Appellate Tribunal. The Tribunal by order dated 12.4.2000, allowed the appeals filed by the Department by coming to the conclusion that the additional income offered in the revised returns were disclosed only after the Department had taken steps and as such, such disclosure was not voluntary. The present appeals have been filed by the assessee challenging such order of the Tribunal.

2. The assessee has sought to raise the following questions of law :-
 1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that there was concealment warranting levy of penalty under Section 271(1)(c)?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in concluding that the returns were not filed voluntarily and hence there was concealment of the amounts offered by the assessee in the revised returns ?

3. Section 271(1)(c) of the Act as applicable on the relevant date is to the following effect :-

 271. (1) If the Income-tax Officer or the Appellate Assistant Commissioner, in the course of any proceedings under this Act, is satisfied that any person- . . .

(c) has concealed the particulars of his income or furnished in accurate particulars of such income,

he may direct that such person shall pay by way of penalty, - . . .

(iii) in the cases referred to in clause (c), in addition to any tax payable by him, a sum which shall not be less than, but which shall not exceed twice, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or the furnishing of inaccurate particulars of such income:

Provided that, if in a case falling under clause (c), the amount of

income (as determined by the Income-tax Officer on assessment) in respect of which the particulars have been concealed or inaccurate particulars have been furnished exceeds a sum of twenty-five thousand rupees, the Income-tax Officer shall not issue any direction for payment by way of penalty without the previous approval of the Inspecting Assistant Commissioner :

Explanation 1.- Where in respect of any facts material to the computation of the total income of any person under this Act, -

(A) such person fails to offer an explanation or offers on explanation which is found by the Income-tax Officer or the Appellate Assistant Commissioner to be false, or
(B) such person offers an explanation which he is not able to substantiate,

then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed :
Provided that nothing contained in this Explanation shall apply to a case referred to in clause (B) in respect of any amount added or disallowed as a result of the rejection of any explanation offered by such person, if such explanation is bona fide and all the facts relating to the same and material to the computation of his total income have been disclosed by him.

4. The Commissioner Income Tax (Appeals) while quashing the order of the Assistant Commissioner had primarily relied upon the decision of the Supreme Court reported in 168 ITR 705 (cited supra). It has been observed in the subsequent Supreme Court decision reported in 251 ITR 99 (K.P.

MADHUSUDHANAN v. COMMISSIONER OF INCOME-TAX) that by virtue of the Explanation to Section 271, which was added after the aforesaid decision was rendered, the view taken in 168 ITR 705 was no longer applicable.

5. In the present case, the Tribunal has come to a conclusion that much before the revised returns were filed by the appellants, the questionnaire had been issued by the Income-Tax Officer calling for certain details and the appellants filed the revised returns only when they were cornered. In other words, the Tribunal found that the revised returns had not been filed voluntarily in a bonafide manner, but with a view to escape from the consequences of not filing a proper return.

6. After considering the materials on record, we do not find anything substantial in nature to come to a different conclusion. As a matter of fact, in the reply to the notice under Section 271(1)(c), the appellants did not offer any credible explanation indicating the reasons for which the amount had not been disclosed in the original returns.

7. For the aforesaid reasons, we do not find any force in the contentions raised by the appellants.

8. In the result, all the questions are answered against the assessee.

dpk

To

The Asst. Commissioner of
Income-tax, Circle I(1), Erode.